

Duty of members of elected bodies and other persons to prevent threatened insolvency of business corporation and consequences of breach of the duty

Abstract

This diploma thesis deals with the area of civil, commercial and insolvency law. It focuses in particular on the duty of directors of a business corporation and other persons to prevent threatened insolvency with emphasis on the legal regulation of the consequences of breach of such duty. This diploma thesis is divided into four main chapters, where the most important one is the second chapter. The chapters in the diploma thesis flow continuously and logically which facilitates the reader's orientation in the subject.

The first chapter defines the basic terms related to the discussed topic which are subsequently used throughout the diploma thesis. Emphasis is placed on the duty of care, whose breach is a prerequisite for the application of the sanctions described in the second chapter.

The second chapter deals with the consequences of the breach of the duty to prevent threatened insolvency. The consequences are analysed in detail and the issues over which the legal consensus is missing are set out in the analysis. Different views on these uncertain points in the legislation are set out, and the thesis takes a critical approach in this matter and supports the argumentation or disproves it. The diploma thesis in this chapter deals with problematic aspects of both material and procedural law.

The third chapter pays attention to the inspiration source of Czech law, which is the English wrongful trading doctrine. After its introduction, the Czech and English legal regulations are compared, followed by a critical assessment of current Czech legislation in this matter.

The last fourth chapter is concerned with the proposal of the amendment of Czech Business Corporation Act, which is currently at the beginning of the legislative procedure, and also this proposal is subject to a critical evaluation based on the knowledge ascertained from the previous chapters.

Key words: duty of care, preventing threatened insolvency, personal liability of directors and other persons, wrongful trading